

Andhra High Court

Khanapuram Gandaiah

vs

The Administrative Officer,

... on 24 April, 2009

**THE HON'BLE THE CHIEF JUSTICE SRI ANIL R.
DAVE AND THE HON'BLE SRI JUSTICE R. Writ
Petition No.28810 of 2008**

24-04-2009

Khanapuram Gandaiah

**The Administrative Officer, Ranga Reddy District
Courts Cum Assistant State Public Information
Officer Under the Right to the Information Act
2005, R.R District Courts, L.B Nagar and others**

Counsel for the petitioner : Mr.Rakesh Sanghi

**Counsel for respondent Nos.1 & 2: Mr. D.V. Sitaram
Murthy, SC for High Court. Counsel for respondent
No.3: Smt. Ch. Vedavani, SC for State Information
Commission**

Counsel for respondent No.4: Notice not issued

:ORDER:

(per Shri Anil R. Dave, Hon'ble the Chief Justice)

1. Being aggrieved by the orders dated 23.11.2006, 20.01.2007 and 20.11.2007 passed by respondent Nos.1 to 3 respectively dismissing the petition and appeals filed by him under the Right to Information Act, 2005 (for short, 'the Act'), the petitioner has filed this writ petition. In this petition, the petitioner has also prayed for a direction to respondent No.1 to provide the information, asked by him vide his application dated 15.11.2006, from respondent No.4. By virtue of the order dated 23.11.2006, respondent No.1 had rejected the said application and respondent Nos.2 and 3 have confirmed the order of respondent No.1 in the first and second appeals filed by the petitioner.

2. The facts giving rise to the present litigation in a nutshell are as under: Petitioner claimed to be in exclusive possession of Ac.8-35 gts. of land bearing Survey No.284 of Puppalaguda Village, Rajendernagar Mandal, Ranga Reddy District as a Khouldar (cultivator) thereof. In the year 2002, one Dr.P. Mallikarjuna Rao filed a suit vide O.S.No.854 of 2002 before Additional Junior Civil Judge (West & South), Ranga Reddy District praying for perpetual injunction against the petitioner and another from entering into the above land. An interlocutory application for interim injunction filed alongwith the said suit was dismissed by the Junior Civil Judge on the ground that the petitioner was in possession of the suit property and against the said order, Dr.Mallikarjuna Rao filed C.M.A.No.185 of 2002 and the same was dismissed whereby the order of the Junior Civil Judge was confirmed. It was the case of the petitioner that during the pendency of the above suit, the mother, daughter and son-in-law of Dr.Mallikarjuna Rao had filed three suits viz., O.S.Nos.805, 875 and 877 of 2003 before the 1st Additional Senior Civil Judge, Ranga Reddy District and the petitioner herein was defendant in O.S.No.875 of 2003 and in the said suit, the trial Court granted interim injunction, against which the petitioner had preferred C.M.A.No.67 of 2005, which had been dismissed by respondent No.4 on 10.8.2006. The petitioner herein appears to be aggrieved by the order passed by respondent No.4 in the said C.M.A but he did not challenge the said order.

3. It is undisputed that the petitioner did not challenge the order dated 10.08.2006 passed by respondent No.4 before any higher Court, and, therefore, the said order has now become final. It may, however, be noted that after hearing of the petition was concluded, the learned Senior counsel for the petitioner had submitted that the petitioner had filed an application for review of the order dated 10.8.2006 passed in C.M.A.No.67 of 2005. On 15.11.2006, he had filed an application under Section 6 of the Right to Information Act before the Administrative Officer-cum-Assistant State Public Information Officer under the Right to Information Act, 2005, Ranga Reddy District Courts, L.B. Nagar (respondent No.1) seeking information to the queries made in paragraph 3 thereof. The said application had been rejected by respondent No.1 on 23.11.2006, against which an appeal under Section 19 (1) of the Act had been filed before the Registrar General-cum-Appellate Authority under the Right to Information Act, 2005 (respondent No.2), but the same had been rejected on 20.1.2007 and against the said order, Second Appeal No.1874 of 2007 had been filed by the petitioner before the Andhra Pradesh State Information Commission (respondent No.3) and respondent No.3 also dismissed the appeal on 20.11.2007. Challenging the above orders, the petitioner has filed the present writ petition by impleading the District Judge, who had passed the order in C.M.A. No.67 of 2005, by name as respondent No.4.

4. We have heard learned advocate Shri Bojja Tharakam, appearing for the petitioner and Shri D.V. Seetharama Murthy, learned Standing Counsel for High Court appearing for respondent Nos. 1 and 2 and have perused the relevant provisions of the Right to Information Act, 2005 and the case law relied on by them.

5. It has been submitted on behalf of the petitioner that respondent No.4 had passed the order in C.M.A.No.67 of 2005 without taking into consideration the written arguments and additional written arguments filed by the petitioner. It has also been submitted that respondent No.4 had omitted to examine a patently fabricated General Power of Attorney (GPA) dated 14.12.1996 filed in the case as Ex.A.8; had failed to examine the letter dated 07.6.2006 written by Sub- Registrar, Mumbai; had not noticed the discrepancy in the names of the executants in the GPA and ignored the

contention of the petitioner that the executants of the GPA were not in existence and were fictitious persons and, therefore, he had committed judicial dishonesty.

6. It has been submitted on behalf of the petitioner that respondent Nos.1 to 3 have wrongly rejected the application filed by the petitioner under Section 6 of the Act on the ground that the correctness or otherwise of a judicial order or judgment cannot be questioned under the Right to Information Act. It has been submitted that the right to information is a fundamental right of a citizen and a citizen cannot be deprived of that right on the ground that the judicial officers are not amenable to the Act. In this connection, the petitioner has relied on the judgments of the Hon'ble Supreme Court in Peoples' Union for Civil Liberties v. Union of India¹ and M. Nagaraj v. Union of India².

7. It has also been submitted on behalf of the petitioner that the Act does not give any special protection to the judicial officers and the right to information, which is a fundamental right of a citizen, cannot be taken away by refusing to provide the information sought for by the petitioner. It has been submitted that respondent No.1 had wrongly rejected the application of the petitioner asking to give information as to why respondent No.4 had written the judgment in a particular manner.

8. It has also been submitted on behalf of the petitioner that Sections 8(1)(b) and 24 of the Act do not provide for any exemption to the judges from giving the information sought for and, therefore, they also come within the purview of the provisions of the Act and, therefore, they are bound to give the information asked for by the parties.

9. On the other hand, the learned Standing Counsel appearing on behalf of the respondents has submitted that the petitioner has not questioned validity of the order passed in C.M.A.No.67 of 2005 before any higher Court. Without challenging the order passed in C.M.A. No.67 of 2005, the petitioner has levelled wild allegations against respondent No.4 to the effect that he has committed judicial dishonesty by not taking into consideration the documents filed by the petitioner at the time of disposing of the C.M.A.

10. It has been next submitted that under the provisions of the Act, respondent No.1 has to give reply to the application filed under Section 6 of the Act and, therefore, respondent No.1 has not committed any mistake when he gave the reply with reasons for denying the information sought for by the petitioner.

11. It has also been submitted that in his application, the petitioner wanted to know the mind of the judge for rejecting the C.M.A., and not the material, which, in any form, was available in the records and, therefore, respondent No.1 was right in rejecting the application of the petitioner.

12. We have heard the learned advocates at length.

13. The petitioner had filed an application before respondent No.1 by invoking the provisions of Section 6 of the Act. Therefore, before going into the merits of the case, it would be appropriate to go through the relevant provisions under the Act. Sections 2 (f), 2 (h), 2 (i) and 2 (j) define the words "information", "public authority", "record" and "right to information" respectively. The same read thus:

2 (f). "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; 2 (h). "public authority" means any authority or body or institution of self- government established or constituted - a) by or under the Constitution; b) by any other law made by Parliament; c) by any other law made by State Legislature; d) by notification issued or order made by the appropriate Government, and includes any - i) body owned, controlled or substantially financed; ii) non- Government organization substantially financed; directly or indirectly by funds provided by the appropriate Government.

2 (i). "record" includes - a) any document, manuscript and file; b) any microfilm, microfiche and facsimile copy of a document; c) any reproduction of image or images embodied in such microfilm (whether enlarged or not)'

and d) any other material produced by a computer or any other device; 2 (j). "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to - i) inspection of work, documents, records; ii) taking notes, extracts or certified copies of documents or records; iii) taking certified samples of material; iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other place;

14. Section 4 of the Act deals with the "obligations of public authorities" with regard to giving information to the applicants under the Act. Section 4 (1)(d), which is relevant for the purpose of deciding this petition, reads as under: "4. Every public authority shall -

(1) (d) Provide reasons for its administrative or quasi-judicial decisions to affected persons."

... .."

15. Section 8 of the Act specifies the circumstances under which the authorities have no obligation to give the information under the Act.

16. Upon reading of Sections 2 (f), 2 (i), 2 (j) and 4 (1)(d) of the Act, it is clear that a citizen has a right to receive "information", which is in any form, including records, documents, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information in relation to any private body which can be accessed by a public authority under any other law for the time being in force. Information does not mean every information, but it is only such information, which is recorded and stored and circulated by the public authority. A citizen has a right to receive such information, which is held by or under the control of any public authority and the public authorities have an obligation to provide reasons for its administrative or quasi-judicial decisions to the affected persons. At the same time, the public authorities are not obliged to provide any information

which has been expressly prohibited by a Court or Tribunal or the disclosure of which might constitute contempt of Court.

17. Thus, upon reading the above provisions, it is clear that the authorities discharging judicial functions are not covered under Section 4 of the Act and, therefore, they are not obliged to provide any information to the applicant under the provisions of the Act in relation to the decisions taken by them. The reason for excluding the authorities concerned with giving judicial decisions is quite apparent. Judicial authorities are supposed to support their judicial decisions by giving reasons for which they come to a particular conclusion. They are supposed to pass reasoned orders so that the concerned party can know the reason for which he failed or succeeded and the appellate authority can know the reasons for which a particular conclusion was arrived at.

18. Coming to the case on hand, the petitioner had filed an application under Section 6 of the Act, seeking information from respondent No.1. In the said application, the petitioner had asked as to why certain documents and arguments were not considered by the learned Judge while considering the C.M.A. The petitioner had also given details of some documents, which had not been considered, and the contents thereof had not been appreciated by the learned Judge while deciding the case. Thus, practically, the application was nothing but a memo of appeal, which could have been filed before the appellate court, but, instead of approaching the appellate court, the petitioner, for the reasons best known to him, had filed an application under the Act for knowing as to why the learned Judge had come to a particular conclusion, either by perusing or ignoring certain documents placed on record of the said case.

19. The petitioner, under the guise of seeking information from respondent No.1 had virtually asked to know as to why and for what reason respondent No.4, a Judicial Officer, had come to a particular conclusion, which was against the petitioner. Thus, by way of the application under Section 6, the petitioner wanted to know from respondent No.1 as to what transpired in the mind of respondent No.4 while deciding the case wherein the petitioner was one of the parties to the litigation. In our opinion, what transpired in the

mind of the Judge would not come within the definition of the word "record". Under the provisions of the Act, a citizen can seek only information, which is available on record with the public authority in material form, but cannot seek clarification by raising queries as to what was in the mind of the Judge when he decided the case. For the said purpose, he has to read the judgment and look at the reasons recorded by the learned judge and if he is aggrieved by the judgment for any reason, he has to file an appeal.

20. Though Sections 8 (1)(b) and 24 of the Act do not provide any exemption to the judges or judicial officers from giving the information sought for, Section 4 (1)(d) specifically states that the public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons. When Section 4 (1)(d) is specifically stating about the reasons to be given by a public authority for its administrative or quasi-judicial decisions to the affected persons, the Court cannot introduce into it an entirely new provision and say that the public authorities shall also have to give reasons to the affected parties for the decisions taken on judicial side. It would be contrary to all rules of construction to read or add words into an Act unless it is absolutely necessary to do so. Moreover, the Court cannot reframe the legislation by adding words in the section.

21. Coming to the contention that respondent No.4 had committed judicial dishonesty by not taking into consideration certain documents filed by the petitioner, we are of the opinion that the petitioner has no locus to raise this contention because he can only ask for the information under the provisions of the Right to Information Act, but cannot question the correctness or otherwise of the order or judgment of a judicial officer under the provisions of this Act. In our opinion, the petitioner has raised this contention only with an oblique motive of levelling allegations against the judge, which is absolutely unjust and improper.

22. Even otherwise, it is to be noted that no person shall be liable to be sued in any civil court for any act done or ordered to be done by him in discharge of his judicial duty. Section 1 of the Judicial Officers' Protection Act, 1850, which gives such a protection, reads as under:

"No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty."

23. As observed in cases of Teyen v. Ram Lal³, Anowar Hussain v. Ajoy Kumar Mukherjee⁴, H.W.F.D' Souza v. Chandrikasingh⁵, and Rachapudi Subba Rao v. The Advocate-General, Andhra Pradesh⁶, protection under the afore-stated Act is absolute so long the action has been taken while performing the judicial duty.

24. [In Anowar Hussain v. Ajoy Kumar Mukherjee](#) (supra), the Hon'ble Supreme Court has observed:

"Judicial Officers are not liable personally for the judgments rendered by them in their judicial capacity. Aggrieved party can neither make any personal allegations against the Judicial Officers nor demand any explanation from them for the manner in which the judgments were rendered. Such a course of action would amount to criminal contempt and interference with the administration of justice. Judgment or an order made by a judicial officer when acting in a judicial capacity can only be questioned by way of preferring an appeal or revision or some such proceeding before the higher judicial forum."

25. On the same principle and to provide similar protection, Judges (Protection) Act, 1985 was enacted. It was found necessary to enact the said Act to enable Judges to act fearlessly and impartially in discharge of their judicial duties. It will be difficult for the Judges to function if their actions in Court are made subject to legal proceedings, either civil or criminal. [In State of Rajasthan v. Prakash Chand](#)⁷, the Hon'ble Apex Court observed as under:- "Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity

from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice."

26. In relation to protection given to the Judges, it has been observed in Halsbury Laws of England, Third Edition (Vol.30) in paragraph 1352 at page 707: "1352. Reasons for protection. The object of judicial privilege is not to protect malicious or corrupt judges, but to protect the public from the danger to which the administration of justice would be exposed if the persons concerned therein were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear(s)."

27. Such immunity has been conferred on judicial officers, so that the judges or judicial officers can act fearlessly, impartially and with full sense of security. In case of abuse of judicial powers, adequate remedy is provided on the administrative side for punishing them and, therefore, the protection so granted would not permit the judicial officers to exercise their judicial powers in a reckless or irresponsible manner. For the afore-stated immunity conferred upon judicial officers, we did not think it necessary to even issue notice to respondent No.4.

28. It is undisputed that right of information is a fundamental right, as held by the Hon'ble Supreme Court in Peoples' Union for [Civil Liberties v. Union of India](#) (supra). However, under the provisions of the Act, a public authority is having an obligation to provide such information which is recorded and stored, but not the thinking process, which transpired in the mind of the authority which had passed an order on judicial side and, therefore, the above decision of the Hon'ble Supreme Court would not help the petitioner to substantiate his submissions.

29. It is also undisputed that there can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review. This principle, which has been enunciated by the Hon'ble Supreme

Court in [M. Nagaraj v. Union of India](#) (supra) and relied on by the petitioner, is not applicable to the case on hand because respondent Nos.1 to 3 have not given any discriminatory treatment to the petitioner so as to do undue favour to respondent No.4. Respondent Nos.1 to 3 have only acted in terms of the Act and passed orders rejecting the application of the petitioner.

30. Even on merits, we do not find any error in the orders passed by respondent Nos.1 to 3. Respondent No.1 has rightly rejected the application of the petitioner and advised him to avail appropriate legal remedies available to him to challenge the order passed in C.M.A. No.67 of 2005 on judicial side. If the petitioner is aggrieved by the order passed in C.M.A.No.67 of 2005, the remedy lies elsewhere, but not the one which he has chosen to avail under the provisions of the Act. The first and second appeals filed by the petitioner before respondent Nos.2 and 3 respectively have been rightly rejected by confirming the order of respondent No.1.

31. In view of the above discussion, we do not find any merit in the petition and, therefore, the petition is rejected.

?1 AIR 2004 SC 1442

2 AIR 2007 SC 71

3 ILR (1890) 12 All 115

4 AIR 1965 SC 1651

5 AIR 1966 MP 223

6 AIR 1981 SC 755

7 AIR 1998 SC 1344 □